

**EXHIBIT D**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BRENDAN LINEHAN SHANNON  
UNITED STATES BANKRUPTCY COURT JUDGE

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 (Whereupon at 12:54 p.m., a recess was taken in the  
2 hearing in this matter.)

5 THE CLERK: All rise.

6 THE COURT: Please be seated. Before we turn to the  
7 omnibus hearing, there are three matters that are before the  
8 Court. They are the objection to SNC's guaranty claim  
9 against GPEG, the objection to SNC's claim to the extent it  
10 exceeds, the step-downs and caps in the completion agreement  
11 based upon allegations of intentional fraud or wilful  
12 misconduct, and the motion to estimate SNC's claim pursuant  
13 to Bankruptcy Rule 3018 for purposes of voting on the plan  
14 currently scheduled for a confirmation hearing on December  
15 20, 2007. I will address each of these items in turn.

16 Before ruling, I will note that the Court has prior to today  
17 conducted many, many hearings in connection with the disputes  
18 between SNC and the debtors. We've covered substantive  
19 matters, discovery disputes, legal arguments, and scheduling  
20 issues, and in connection with this trial, the Court has  
21 reviewed the debtors' claim objections, the multiple  
22 responses and replies, substantial affidavits, designated  
23 depositions, and many, many exhibits as well as counter-  
24 designations from both sides. The Court has now conducted a  
25 full trial on the merits. I am satisfied that we have a

1 fulsome record and that there has been a full and fair  
2 opportunity to air these issues, and I would like to  
3 compliment and thank all counsel for their professionalism  
4 and courtesy to one another in what, to the Court, has  
5 clearly been challenging and hotly contested litigation.  
6 Turning to the first question being SNC's claim for a parent  
7 guaranty from GPEG. I will sustain the debtors' objection  
8 and I will disallow that claim. The debtors' objection is  
9 based on the statute of frauds, which under either U.S. or  
10 Canadian law requires that a promise to be responsible for  
11 the debt of another must be in writing to be enforceable.  
12 This is a bedrock principle of American and British and  
13 Canadian law since the 17<sup>th</sup> century. The record is undisputed  
14 that there is no signed guaranty by GPEG. This has been  
15 attested to by Ms. Cheeseman and acknowledged by Mr.  
16 Tardanico, as since he correctly argues that the statute of  
17 frauds is not absolute and that the courts have recognized a  
18 number of exceptions. These exceptions operate to prevent  
19 the statute of frauds from being used strategically by a  
20 party or in the simpler terms of the British high court in  
21 the actions during the case where application of the statute  
22 of frauds, quote, "would yield an unconscionable result."  
23 SNC is correct, the Canadian and U.S. law require that the  
24 statute of frauds not be used as, quote, "an engine of  
25 fraud", close quote. And SNC argues also for application of

1 the wider interest rule which carves out from the statute  
2 cases where the guaranty is incident to a larger transaction  
3 and where the party to be held liable has an interest in the  
4 overall transaction. There is a further exception, which I  
5 will refer to as the multiple document rule, which provides  
6 an out from the statute of frauds if a party can establish  
7 the commitment or transaction from a collection of materials  
8 even in the absence in a single signed contract. SNC  
9 contends that these exceptions apply here, I disagree. The  
10 record already reflects that a parent guaranty was one of the  
11 deal points that was on the table when the purchase order was  
12 being negotiated. So was a letter of credit. So was a  
13 reserve, and it is true that Exhibit T to the purchase order  
14 was a blank standard form of parent guaranty, but the only  
15 documentary evidence presented today to directly support the  
16 proposition that either GPEG or Deltak promised SNC a GPEG  
17 guaranty is a handwritten four-word line from Mr. Tardanico's  
18 notes of a teleconference with a Deltak representative  
19 stating, quote, "Parent guaranty, no problem", close quote.  
20 I will acknowledge that Mr. Tardanico testified credibly  
21 regarding his belief that he had been promised a parent  
22 guaranty by Mr. Ness. On the other hand, Mr. Edwards, Ms.  
23 Cheeseman, Mr. Wilson, Mr. Hanson, and Mr. Ness all testified  
24 that they never promised or approved a parent guaranty.  
25 Additionally, the record does not show any correspondence or

1 other documentation to support the allegation that a request  
2 for a parent guaranty was made to GPEG. Ms. Cheeseman, Mr.  
3 Wilson, and Mr. Hanson all testified regarding the mechanics  
4 of how requests for parent corporate guaranties work their  
5 way through the approval process, and there is no evidence of  
6 that occurring here. Similarly, evidence of the words,  
7 quote, "no comment", close quote, next to the blank form of  
8 Exhibit T as reflected in Mr. Tardanico's testimony is not  
9 insignificant, but standing alone, it is not sufficient to  
10 overcome the documentary requirements of the statute of  
11 frauds. To make its case, SNC required more of a showing and  
12 if indeed the parent guaranty has been such a central piece  
13 of the transaction, there would be more evidence of that  
14 demand and the purported agreement, either emails or  
15 correspondence memorializing the demand and requesting  
16 approval post-contract execution, requests for documentation,  
17 and the like. Moreover, Mr. Tardanico acknowledged on cross-  
18 examination that he never discussed or negotiated with Mr.  
19 Ness the terms of a parent guaranty, the amount, the  
20 duration, the conditions, trigger events, et cetera. The  
21 record is, therefore, simply not sufficient. Also, the  
22 contract itself does not support SNC with sufficient vigor.  
23 As noted, Exhibit T was a form of parent guaranty, but  
24 section 21 of the terms and conditions of the contract titled  
25 Financial Security list several options or in Mr. Ness's

1       terms deliverables, but does not include a parent guaranty.

2       Similarly, the record does not support application of the

3       wider interest rule. SNC testified that the parent guaranty

4       or similar security was critical to the deal, and at a

5       baseline level, GPEG as the parent, did have an economic

6       interest in seeing Deltak get the business. But SNC's

7       invocation of the exception here would swallow the rule and

8       basically provide that parent guaranties of subsidiary

9       contracts need not be in writing. Every parent has an

10      interest in the success of its subsidiary and parent

11      guaranties, while important, are typically incident to the

12      real purpose or objective of the contract between the

13      subsidiary and its customer. Based on the record before me,

14      I cannot conclude that SNC has identified sufficient evidence

15      or documentation to escape application of the statute of

16      frauds. Likewise, I do not find that enforcement of the

17      statute of frauds in this case would work a manifest

18      injustice or yield an unconscionable result. To the

19      contrary, the trial that we just had with conflicting

20      testimony and competing circumstantial evidence is precisely

21      the exercise that the statute of frauds was designed to

22      prevent. This is a court of equity, and if sufficient

23      evidence supported the allegations that the debtors were

24      behaving badly or had engaged in a bait and switch, I would

25      not hesitate to impose liability, both the law and principles

1 of equity support that, but on this record, SNC has not  
2 carried its burden to establish that a parent guaranty had  
3 been actually promised and then wrongfully withheld. The  
4 second matter before the Court is the debtors' objection to  
5 SNC's claim against Deltak. As we all know, the original  
6 contract between SNC and Deltak was rejected effective as of  
7 the petition date, and the completion agreement was either an  
8 ovation or a settlement agreement, and it operates to cap  
9 SNC's claims pursuant to a step-down schedule contained in  
10 section 2.2 of the completion agreement. The only way for  
11 SNC to enforce a claim in excess of the step-down schedule is  
12 by proving that the debtors' engage in, quote, "intentional  
13 fraud or wilful misconduct". As I will describe in more  
14 detail, I do not find that SNC has established that the  
15 debtor has engaged in intentional fraud or wilful misconduct,  
16 and so, I will sustain the debtors' objection and disallow  
17 SNC's claims to the extent that they exceed the step-down  
18 amounts in section 2.2 of the completion agreement. I  
19 previously ruled that the operative period for claims arising  
20 under the, quote, "intentional fraud and wilful misconduct",  
21 close quote, exception commences on the petition date at the  
22 very earliest. Thus, potential claims against Deltak by SNC  
23 arising out of a negotiation of the underlying contract or  
24 purchase order were waived or otherwise disposed of by  
25 rejection of that contract and entry into the completion

1 cleared out by the end of the day today. Why don't we take  
2 a five-minute recess, and then we'll reconvene.

3 (Whereupon at 2:39 p.m., a recess was taken in the  
4 hearing in this matter, the hearing on the trial matters  
5 having been concluded for this date.)

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18 I, Elaine M. Ryan, approved transcriber for the  
19 United States Courts, certify that the foregoing is a correct  
20 transcript from the electronic sound recording of the  
21 proceedings in the above-entitled matter.

22

23 /s/ Elaine M. Ryan January 7, 2008  
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